

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FASTENERS FOR RETAIL, INC., )  
Plaintiff, )  
v. ) Case No. 11-cv-2164  
GERALD ANDERSEN and ) Honorable Matthew F. Kennelly  
K INTERNATIONAL, INC., )  
Defendants. )

**FFR'S MOTION TO DISMISS K INTERNATIONAL'S COUNTERCLAIMS**

Fasteners for Retail, Inc. (“FFR”), by its attorneys, respectfully moves to dismiss K International, Inc.’s (“K International”) Counterclaims pursuant to FRCP 9(b), 12(b)(1) and 12(b)(6) because K International’s false marking claims plead no objective facts showing that FFR actually knew that any of its patents had expired or that FFR intended to deceive the public through its product catalogs.

As more fully detailed in its Memorandum, FFR's use of the word "patented" in its product catalogs, instead of listing every patent number for the thousands of products in its catalogs, is simply not sufficient to raise an inference that FFR knew that specific patents had expired and used the word "patented" to purposefully and intentionally deceive the public. Because K International has not alleged an actual intent to deceive, the Court should dismiss K International's false marking claim. Because K International's allegations regarding FFR's bad faith are entirely dependent on the legally insufficient and factually inadequate false marking allegations, K International's Lanham Act false advertising and state-law unfair competition claims cannot survive.

WHEREFORE, FFR respectfully requests that this Court dismiss K International's Counterclaim in its entirety with prejudice for failure to state a claim upon which relief can be granted, and grant such other and further relief as justice may require.

Dated: May 27, 2011

Respectfully submitted,

/s/ William B. Berndt

One of the attorneys for Plaintiff Fasteners For Retail, Inc.

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**CERTIFICATE OF SERVICE**

I, William B. Berndt, an attorney, hereby state that I caused a copy of the attached **FFR's Motion to Dismiss K International's Counterclaims** to be filed electronically with the Clerk of the Court using the CM/ECF system on this 27th day of May, 2011, which will automatically forward notice to the following registered individuals:

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